

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA DE LA O, et al.,
Plaintiffs,
v.
ROBIN ARNOLD-WILLIAMS, et
al.,
Defendants.

NO. CV-04-0192-EFS

**ORDER GRANTING JOINT MOTION
FOR ORDER TENTATIVELY
APPROVING CLASS AGREEMENT,
DIRECTING NOTICE TO CLASS
MEMBERS, AND SCHEDULING
FAIRNESS HEARING; HOLDING IN
ABEYANCE THE JOINT MOTION TO
VACATE ORDERS DECLARING RCW
4.24.350(2) UNCONSTITUTIONAL;
AND GRANTING JOINT MOTION FOR
EXTENSION OF TIME**

MARIA FERNANDEZ, et al.,
Plaintiffs,
v.
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, et al.,
Defendants.

[NO. CV-05-0280-EFS]

A hearing was held in the above-captioned matters on June 20, 2008. Kay Frank appeared on behalf of the *De La O* Plaintiffs; Ty Duhamel appeared on behalf of the *Fernandez* Plaintiffs. Defendants were

1 represented by Carrie Bashaw, Ken Orcutt, and John McIlhenny. Before the
2 Court were the Joint Motion for Order Tentatively Approving Class
3 Agreement, Directing Notice to Class Members, and Scheduling Fairness
4 Hearing (Ct. Rec. 798) and Joint Motion to Vacate Orders Declaring RCW
5 4.24.350(2) Unconstitutional (Ct. Rec. 807). Following the hearing,
6 *Fernandez* Plaintiffs filed a Motion to Expedite (Ct. Rec. 811) and a
7 Joint Motion for Extension of Time (Ct. Rec. 813). After reviewing the
8 submitted materials and hearing from counsel, the Court was fully
9 informed. This Order memorializes and supplements the Court's oral
10 rulings and sets forth the Court's rulings on the recent motions.

11 **A. Joint Motion for Order Tentatively Approving Class Agreement,**
12 **Directing Notice to Class Members, and Scheduling Fairness Hearing**

13 Pursuant to Federal Rule of Civil Procedure 23(e), the *Fernandez*
14 Plaintiffs and State Defendants ask the Court to approve settlement of
15 the certified Class'¹ claims as agreed by the parties in the Proposed
16 Class Agreement. The Proposed Class Agreement disposes of all
17 declaratory, injunctive, and equitable claims that were brought or could
18 have been brought in this action.

19
20 ¹ The certified Class is: "all persons who currently are or in the
21 future are licensed by the Department of Social and Health Services to
22 provide family home child care services." (CV-05-280: Ct. Rec. 97 p. 9.)
23 The certified Subclass is "all limited English proficient ("LEP") persons
24 who currently are or in the future are licensed by department of Social
25 and Health Services to provide family home child care services." (CV-05-
26 0280: Ct. Rec. 97 p. 11.)

1 A class action may be settled only with approval of the court. FED.
2 R. CIV. P. 23(e) (2008); *Officers for Justice v. Civil Serv. Comm'n*, 688
3 F.2d 615, 623 (9th Cir. 1982). Rule 23(e) sets forth the following
4 procedures:

5 (1) The court must direct notice in a reasonable manner to all
class members who would be bound by the proposal.

6 (2) If the proposal would bind class members, the court may
7 approve it only after a hearing and on finding that it is fair,
reasonable, and adequate.

8 (3) The parties seeking approval must file a statement
identifying any agreement made in connection with the proposal.

9 (4) If the class action was previously certified under Rule
10 23(b) (3), the court may refuse to approve a settlement unless
it affords a new opportunity to request exclusion to individual
class members who had an earlier opportunity to request
exclusion but did not do so.

11 (5) Any class member may object to the proposal if it requires
12 court approval under this subdivision (e); the objection may
be withdrawn only with the court's approval.

13 At this time, the parties ask the Court to approve the proposed
14 Notice of Settlement ("the Notice") to the Class, direct issuance of the
15 Notice to the Class, and set a hearing to determine whether the
16 settlement is fair, reasonable, and adequate. See *Hanlon v. Chrysler*
17 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (A court may only approve a
18 settlement that is "fundamentally fair, adequate, and reasonable.")
19 After review, the Court determines that issuing the proposed Notice is
20 appropriate. Accordingly, the Joint Motion for Order Tentatively
21 Approving Class Agreement, Directing Notice to Class Members, and
22 Scheduling Fairness Hearing is granted. Due to the delay in having the
23 Notice translated into Spanish, the Court grants the requested extension
24 and modifies the deadlines imposed at the hearing.

**B. Joint Motion to Vacate Orders Declaring RCW 4.24.350(2)
Unconstitutional**

As a condition of the Proposed Settlement Agreement, the parties ask the Court to vacate two of its prior Orders: the September 25, 2006, Order (Ct. Rec. 289) (declaring RCW 4.24.350 unconstitutional) and the December 20, 2006, Order (Ct. Rec. 581) (concluding RCW 74.15.050, RCW 74.15.080, WAC 388-296-040, and WAC 388-296-0520 unconstitutional). These Orders are *not* final orders; rather, the Orders are interlocutory orders. A final order or judgment has not been entered as these cases are currently stayed pending the State's interlocutory appeal of the Court's qualified immunity rulings. Therefore, Federal Rule of Civil Procedure 54(b), not Rule 60(b), applies to the parties' request. *C.f. Am. Games, Inc. v. Trade Prods., Inc.*, 142 F.3d 1164, 1168-69 (1998) (setting forth standard for vacatur of final order under Rule 60(b)(5)). Rule 54(b) states:

[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

FED. R. CIV. P. 54(b) (2008). A court has complete power over interlocutory orders made therein and has authority to revise them when it is "consonant with equity" to do so. *Simmons v. Brier Bros Co.*, 258 U.S. 82 (1922); see *U.S. Gypsum Co. v. Pac. Award Metals, Inc.*, 2006 WL 1825705 (N.D. Cal. 2006) (agreeing to vacate an interlocutory order at the request of the parties).

1 As set forth above, the Court conducted an initial review of the
2 Proposed Class Agreement. If the Court ultimately approves the
3 agreement, it would appear proper and just that the Court grant vacatur
4 of these two prior interlocutory Orders. An order of vacatur will then
5 be entered more completely discussing the rationale for it.

6 The joint motion to vacate is held in abeyance pending the August
7 12, 2008, hearing.

8 **C. Conclusion**

9 For the reasons given above, **IT IS HEREBY ORDERED:**

10 1. The Joint Motion for Order Tentatively Approving Class
11 Agreement, Directing Notice to Class Members, and Scheduling Fairness
12 Hearing (**Ct. Rec. 798**) is **GRANTED**.

13 2. No later than **July 9, 2008**, the Notice, in both English and
14 Spanish, shall be mailed to the Class. The Notice shall indicate that
15 the deadline to submit written comments is **July 30, 2008**. As agreed, DEL
16 shall incur the cost of mailing this Notice. Also, as agreed, the Notice
17 shall be posted on Columbia Legal Services' website in both English and
18 Spanish.

19 3. The Court sets a hearing on **August 12, 2008, in Richland,**
20 **Washington, at 1:30 p.m.** to determine the fundamental fairness,
21 adequateness, and reasonableness of the Proposed Class Agreement.
22 Parties shall file their briefs no later than **August 5, 2008**.

23 3. The Joint Motion to Vacate Orders Declaring RCW 4.24.350(2)
24 Unconstitutional (**Ct. Rec. 807**) is **HELD IN ABEYANCE pending the AUGUST**
25 **12, 2008, hearing**.

DATED this 13th day of August 2008.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge